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September 3, 2019

VIA ECF AND EMAIL

The Hon. Cathy Seibel
United States District Court
Southern District of New York
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601

**Re: *AF Trucking Inc. v. Business Financial Services, Inc.*, No. 7:19-cv-08149-CS
Notice of Pending Pre-Removal Proceedings**

Dear Judge Seibel:

This firm represents Defendants, Business Financial Services, Inc. d/b/a BFS Capital and Axos Bank, in the above-captioned action recently removed from the Supreme Court of the State of New York. We write to advise the Court that, at the time of removal, the state court had temporarily stayed proceedings pending resolution of Defendants' motion to compel arbitration.

Defendants moved by order to show cause on August 15, 2019 to stay proceedings and compel arbitration pursuant to sections 3 and 4 of the Federal Arbitration Act ("FAA", 9 U.S.C. §§ 1 *et seq.*).¹ Thereafter, the state court stayed all other proceedings and set a generous briefing schedule pursuant to which Plaintiffs' opposition would be due September 26, 2019 and Defendants' reply due October 10, 2019.²

Pursuant to 28 U.S.C. § 1450, "[a]ll injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." Accordingly, it is our understanding that the state court's orders staying proceedings and setting a briefing schedule for Defendants' motion remain in full force and effect, pending further order by this Court. We respectfully request that Your

¹ A copy of Defendants' motion papers is attached hereto as **Exhibit A**.

² A copy of the state court's order is attached hereto as **Exhibit B**.

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Honor advise the parties whether any further action is required to preserve the stay and/or briefing schedule.

Absent a stay, Defendants' time to answer or otherwise respond to the complaint would expire on September 6, 2019. *See* Fed.R.Civ.Proc. 81(c). As such, and out of an abundance of caution, we asked Plaintiffs' counsel on August 30, 2019 to stipulate to (1) an extension of Defendants' time to respond to the complaint and (2) a briefing schedule for that motion. Plaintiffs' counsel responded: "I won't be consenting. You'll need to make a motion."³

Given Plaintiffs' counsel's position, and out of a further abundance of caution:

- To the extent there is a possibility that these proceedings may not be stayed on September 6, 2019, we ask the Court to accept this letter as a request, pursuant to section 1.E of Your Honor's *Individual Practices*, for an extension of Defendants' time to answer or otherwise respond to the complaint until 21 days from the lifting of the stay. No prior request has been made for such an extension.
- To the extent the Court would be assisted by a formal renewal of Defendants' motion to stay proceedings pursuant to FAA § 3 and to compel arbitration pursuant to FAA § 4, the basis for which is set forth in the attached Affirmation of Michael B. Smith (Exhibit A), we ask the Court to accept this letter as a request for a pre-motion conference pursuant to section 2.A of Your Honor's *Individual Practices*.

The stay and briefing schedule set by the state court are still in effect as far as this Court is concerned. Defendant's answer will be due 21 days after the stay is lifted. It would be helpful administratively if Defendant formally renewed its motion on the docket, and it may go ahead and do so without the need for a pre-motion conference. Defense counsel shall provide a copy of this endorsement to Plaintiffs' counsel, who shall promptly file a notice of appearance (or, if not admitted to this court, promptly get admitted or arrange for Plaintiffs to be represented by counsel who is admitted).

Respectfully submitted,


 Michael B. Smith

cc: Scott Levenson, Esq
 chambersnysdseibel@

SO ORDERED.

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4836-6760-2083, v. 3


 CATHY SEIBEL, U.S.D.J.

9/4/19

³ A copy of that email exchange between counsel is attached hereto as **Exhibit C**.